

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAMUEL PATTERSON, JR.,

No. C-10-4256 EMC

Plaintiff,

v.

**ORDER RE FIRST AMENDED
COMPLAINT**

US BANK,

(Docket No. 7)

Defendant.

Previously, the Court granted Plaintiff Samuel Patterson's application to proceed in forma pauperis but dismissed the complaint for failure to state a claim for relief. *See* Docket No. 6 (order). The Court gave Mr. Patterson an opportunity to file an amended complaint to address the deficiencies identified by the Court. Mr. Patterson has now filed an amended complaint. Having considered the contents of that complaint, the Court hereby dismisses the case with prejudice.

I. DISCUSSION

As the Court previously noted, the gist of Mr. Patterson's complaint is that US Bank violated his constitutional rights and, because Mr. Patterson is asserting that his constitutional rights have been violated, he is implicitly asserting a claim pursuant to 42 U.S.C. § 1983.¹ "To establish a §

¹ Section 1983 provides in relevant part as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

1 1983 claim, a plaintiff must show that an individual *acting under the color of state law* deprived him
 2 of a right, privilege, or immunity protected by the United States Constitution or federal law.” *See*
 3 *Levine v. City of Alameda*, 525 F.3d 903, 905 (9th Cir. 2008) (emphasis added). A private actor is
 4 deemed to be a person acting under color of state law under limited circumstances only – namely,
 5 “where there is ‘significant’ state involvement in the action.” *Franklin v. Fox*, 312 F.3d 423, 444
 6 (9th Cir. 2002). As indicated by the above language, there is no precise formula for determining
 7 whether a private party is a state actor, but the Supreme Court has emphasized that “state action may
 8 be found if, though only if, there is such a ‘close nexus between the State and the challenged action’
 9 that seemingly private behavior ‘may be fairly treated as that of the State itself.’” *Brentwood Acad.*
 10 *v. Tennessee Secondary Sch. Ath. Ass’n*, 531 U.S. 288, 295 (2001).

11 In his amended complaint, Mr. Patterson asserts that US Bank should be deemed a person
 12 acting under color of state law because “the State gave US Bank the right to operate in its State . . .
 13 and US Bank is under Federal control.” FAC at 1. This argument is unavailing in light of the
 14 Supreme Court’s decision in *Blum v. Yaretsky*, 457 U.S. 991 (1982). There, the Supreme Court
 15 stated that “[the] mere fact that a business is subject to state regulation does not by itself convert its
 16 action into that of the State.” *Id.* at 1004; *see also Cooper v. United States Postal Serv.*, 577 F.3d
 17 479, 492 (2d Cir. 2009) (stating that “[a] finding of state action may not be premised solely on the
 18 private entity’s creation, funding, licensing, or regulation by the government”). Accordingly, the
 19 Court concludes that Mr. Patterson has failed to state a claim for relief pursuant to § 1983 against
 20 US Bank.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///


27 _____
 28 42 U.S.C. § 1983.

II. CONCLUSION

Because Mr. Patterson has still failed to state a claim for relief after being given an opportunity to cure deficiencies with his original complaint, the Court dismisses the case, this time with prejudice. The Clerk of the Court shall enter judgment and close the file in the case. Should Plaintiff seek information about alternative remedies, he should seek advice from the Legal Help Center (flyer attached).

IT IS SO ORDERED.

Dated: November 12, 2010



EDWARD M. CHEN
United States Magistrate Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAMUEL PATTERSON, JR.,

No. C-10-4256 EMC

Plaintiff,

v.

CERTIFICATE OF SERVICE

US BANK,

Defendant.

I, the undersigned, hereby certify that I am an employee in the U.S. District Court, Northern District of California. On the below date, I served a true and correct copy of the attached, by placing said copy/copies in a postage-paid envelope addressed to the person(s) listed below, by depositing said envelope in the U.S. Mail; or by placing said copy/copies into an inter-office delivery receptacle located in the Office of the Clerk.

SAMUEL PATTERSON, JR.
1244 Northpoint Drive #A
San Francisco, CA 94130
415/796-2849

Dated: November 12, 2010

RICHARD W. WIEKING, CLERK

By: /s/ Leni Doyle
Leni Doyle
Deputy Clerk